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Sub heading	Paragraph	Firm/Soft view		Question	Paragraph of report
The Online Court	12.6	Firm		I consider that there is a clear and pressing need to use the opportunity presented by the digitising of the civil courts to create for the first time a court (the OC) for litigants to be enabled to have effective access to justice without lawyers.	

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ChBA Comment
There already exists the Small Claims Court which is in theory designed for LIPs. This should provide access to justice without lawyers. It does not appear to naturally follow that a new "OC" will solve the issues that may exist in the Small Claims Court (which obviously ought to be assessed and addressed). In terms of implementation, the current court system is not even digitised yet, let alone capable of supporting the proposed “OC”. Identified issues with the small claims court (perhaps in their documentation or processes) could be improved. The natural evolution of digitisation and the improvement of the Small Claims court may indeed led to a court whose processes are online but evolution (rather than revolution). This means of reaching an “online court” will mean 1) the system will adapt to the needs of its users 2) allow the technology to be tailored to the system It is not clear that the objectives of the OC will provide access to justice for those currently locked out. The only potential users surveyed do not appear to want this technological change. We remain concerned that the general public may be concerned about the data security and unwilling to put the personal information that arises in some cases online. The requirements to access the OC will include IT literacy and access to a computer and internet connection.

	12.6	Firm		I regard a general value ceiling of £25,000 as a sensible first steady-state ambition for the OC, even if it is necessary to build up to it in stages, and by no means ruling out the possibility of increased jurisdiction if the concept proves to be a success.	

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It is also unclear whether the objective to remove lawyers from the process is either achievable or desirable for such a broad group of litigants. Clearly assistance needs to be provided for those who would be unable to access lawyers under either the current system or the proposed system. The court service (in many cases) currently benefits from the initial "triage" by solicitors: that is likely to be valuable as it streamlines issues. It may be an unintended consequence of this proposal that those who would have sought legal advice and benefited from it, now do not. That may actually increase the burden on the court system. However, the proposed limited of £25,000 has such value that people may indeed still want to seek legal advice: £25,000 is a very large amount of money to most people. The process is still likely to be daunting for LIPs.

We are also concerned that the removal of lawyers may leave a vacuum in which LIPS are exploited by "professional" but unregulated "assisters".

In light of the above, we are of the view that
1) there should a pilot of the scheme
2) the trial of it on a wider basis should be at the same as Small Claims
3) this limit can be raised when the above two elements are successful and there is demand from the users that they want it raised

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		Firm		That value ceiling will need to have the built-in flexibility to move cases from it into a more traditional court where complexity or other relevant considerations make that appropriate on a case by case basis.	

Although we agree, the risk of a high limit (£25,000) is that a lot of cases will be transferred (as many will have complexity). This will move LIPs from a forum with no costs shifting to costs shifting. This may have a chilling effect on litigants or those considering litigation. Further, the matter may be complex although low value. There would need to be a procedure to transfer it to the Small Claims track or complicated low value claims currently litigated there (often with the D represented by a lawyer) with no costs shifting, would be moved to costs shifting.

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	12.7	Firm		Structure: automated, inter-active online triage at stage 1, conciliation and management at stage 2, and resolution by judges at stage 3, by whichever of documentary, telephone, video or face to face process is best suited to each case	Chapter 6

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This point ties into our concerns above regarding the appetite for this amongst the public. It is likely to require high IT literacy levels: i.e. the users would be required to make active submissions. That literacy level is not borne out by the Household and Individuals 2015 Internet Access review; http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2015-08-06
From that review, it is clear that although internet access is improving, it is still at a low level in the over 65s and the internet usage is research based (looking for information) rather than active use via the internet (selling goods or services online).
Further, when goods are purchased on the internet, the value of those goods is low - predominately below £500. There is no indication that the public has the appetite to engage in proportionately high value (£20,000- £25,000) matters via the internet.

We are also concerned that those from low socio-economic groupings and/or the vulnerable are the groups most likely to have low IT literacy skills and/or limited or no computer and internet access. Any OC system would have to ensure that these groups were not excluded. We note that at paragraph 6.57 of the interim report, over 50% of current LIP court users are likely to find the use or even ownership of computers challenging. That concerns us that these people will be excluded from access to justice.

	12.7	Firm		There should be very little scope for costs shifting, to include court fees and some disbursements but not legal costs.	

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In any case where cross examination occurs or serious legal discussion occurs, resolution should be face to face. This is in part because the technology or mechanics of other hearings do not or may not work well. The technology for telephone hearings often does not work well, even when both parties have lawyers. Video requires a stable internet connection and a private space. However, telephone hearings for case management ought to be utilised more. Further, it is also more difficult to police who is exercising rights of audience in non-face to face hearings or who else may be providing information/advice/ tactics in the background. Only very simple substantive mattes are likely to be suitable for telephone hearings; how much will this change actually improve access to justice when those hearings are likely to be short and fast in person, in any event? Do the public value face to face time with judges? It is our experience that they do and court orders (however unhappy litigants may be with them) are also respected when produced from face to face hearings. We note that users value face to face determination (such as the show Judge Rinder) and a successful court system is one in which the losing party feels their case has been heard and considered.
Yes, although this is just the small claims court online (save for the conduct exception)

	12.8	Firm		steady-state ambition should be to make the OC compulsory for cases within its competence,	
	12.8	Firm		but only when processes for providing the requisite support to those challenged by the use of computers and online services have been designed, tested and proved to work	

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We are concerned that the OC may be perceived as a second rate and/or second class of justice. To seek to shut these LIPS out of the current system (by making it compulsory) may reinforce that impression: i.e. traditional justice and court hearings for the wealthy; an automated faceless online system for the ordinary. Making it compulsory (or even having an aim to make it compulsory) may unfortunately give the impression that these litigants are at best an inconvenience, streamed off to a system that those with higher value claims do not have to go through. Such a perception, although at complete odds with the intention to improve access to justice, would sadly damage access to justice and undermine the intentions of the Report. It is not clear how the compulsory system would be Art 6 compatible for those with limited IT skills or limited English. We are of the view that if the system is a success, LIPS will want to use it -and will naturally migrate to it without needing to make the system compulsory.
We have commented on the provision of triage forms and assistance in the letter covering this document. We agree that the system will need to be designed, tested and proven to work and hopefully be the best option from a cost-benefit analysis. As stated above, we are of the view that if the system is successful, migration will happen automatically. The provision of the requisite support if the system is compulsory may be expensive and challenging (from legal advice and conducting litigation view points).

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Case Officers and Automation	12.9	Firm		clearly is scope for transferring some functions currently undertaken by judges at the more routine end of their spectrum of work, from judges to Case Officers and for the automation of some of those functions. These functions are likely to include matters which are not actively disputed, and some routine case management of less complex cases, including management of all cases in the OC	
	12.1	Firm		The making of decisions resolving parties' substantive (rather than procedural) rights and duties will not be suitable for transfer to Case Officers, nor will be the approval of settlements on behalf of children and other protected parties.	
	12.11	Firm		An important part of the role of Case Officers should be the provision of conciliation services in the OC.	

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The devil will be in the detail. Procedural steps such as unless orders, relief from sanctions, extensions of time can be very important and require assessment beyond a check box list assessment by a G16 Officer. It is not clear what the cost-benefit analysis of this step will be: we expect this to be calculated in the future. If many decisions (such as 90% of decisions) are going to be reviewed by a judge in any event, we are concerned that the cost-benefit analysis will not demonstrate sufficient costs saving and add an extra level of bureaucracy. This extra layer of bureaucracy may not improve litigants' access to justice. It is not clear from the report whether there will be one officer assigned to a case or it will be "*call centre* " style (every time you get a different person). If the teams of CO are large, that may cause inconsistencies across the management of the case.
Agree. See above that our view is that some procedural matters require judicial discretion and therefore would not be appropriate for CO. A process will need to be put in place to allow CO to make the assessment of whether it was suitable for them.
Obviously they should not be able to undertake steps that require legal knowledge/training. It is assumed that once a CO has been involved in a step such as conciliation that they will not be able to continue in the management of the case.

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	12.12	Firm		Case Officers will need training and experience appropriate to their particular functions, and active judicial supervision of their discharge of all functions currently carried out by judges.	
	12.13	Firm		Parties aggrieved by the decision of a Case Officer should be entitled to have the decision re-considered by a judge	
Number of courts	12.14	Firm		There should not be an immediate move to the creation of a unified civil court, ahead of the Civil Courts Structure Review: Interim Report Next Steps 123 implementation of the Reform Programme. The creation of the OC should not lead to the simultaneous replacement of the County Court, even if the OC is established as a separate court.	
	12.15	Firm		But this view does not stand in the way of the unification of processes for Enforcement, if on further consideration that finds favour	

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We are unsure as to what this will actually mean in practice. Who will fund the training (i.e. will it be like the BPTC or will it be funded by the employers?); what will the training involve?
Yes - as a right. We are unsure as to the cost-benefit analysis of this outcome and what savings will be realised.

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Allocation of Judges to Civil Work	12.16	Firm		There should be a stronger concentration of civil expertise among the Circuit Judges and District Judges.	
	12.17	Firm		All civil work with a regional connection should be judicially case managed and tried in the regions, regardless of value, with very limited specialist exceptions, such as Patents.	
	12.18	Firm		A way must be found to prevent the permanent loss of civil hours to meet the needs of urgent family cases.	

We agree. In order for this to occur it is likely that courts will also have to specialise and/or recruit from the relevant specialist areas.
We agree with the principle that no case should be too big to be resolved in the regions. This will need increased resourcing and commitment for appropriate level judges to go on circuit. i.e. if the parties are to be compelled to litigate a chancery matter in Cardiff, they ought to be guaranteed the same quality of judge and support staff as they would have in London. Without those commitments it is not clear how the parties could be forced to litigate in a particular place. We are also concerned at the use of deputies and the use of deputies without the necessary specialisms sitting in areas of civil work. We note that the regions can attract work (and become desirable centres) when high quality judges are placed there. If the judges are available, parties are likely to prefer local hearings; a market response point.
Agree this is a good idea - but we are unclear on how it will be achieved.

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Now or Never	12.19	Urgent		The accelerating timetable of the Reform Programme means that some items ought to be addressed more urgently than a seven month timetable going forward would permit.	
	12.2	Urgent		The first is the burden on the Court of Appeal, and options for alleviating it. I have explained in Chapter 9 how urgent this is, and that some decisions on a package of measures are likely to be made, at least in principle, in early March 2016. Written feedback on this issue by the end of February would therefore be most welcome.	

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We find it hard to believe that the outcome of the Reform Programme will be as quick as anticipated.

	12.21	Urgent		The second consists of another package, namely taking the steps necessary to prepare the civil judiciary in advance to play their part in the management of the revolutionary changes that are about to occur as the Reform Programme begins to be rolled out, from April 2016. These include improvements to the structure for the operational management of the civil workload, funding and preparation for the Judicial College to be able to provide the leadership and operational training to the judiciary, and the provision of staff support to the leadership judiciary.	

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This appears essential in any event.

	12.22	Urgent		The third, which I can only describe in the most general terms at the moment, is progressing nearer to conclusions about structural options closely connected with those parts of the Reform Programme for which the design will need to be undertaken before August 2016. The best indication of the part most likely to have been embarked upon by then is the detailed design of the software needed for the Online Court. This is likely to be an important critical path item, for reasons which will be apparent from Chapters 4 and 6.	

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As set out above, we strongly support the stress testing and evolution of any new large-scale IT. In terms of the "project management" triangle, we consider "good" to the be most important outcome (i.e. pick any two of good, cheap and fast). We consider that fast should not be the determinative factor.

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The Online Court	12.25.1	Debate		Whether the OC should be a separate court with its own bespoke rules, or a branch of the County Court, governed by the CPR with appropriate amendments. My provisional view favours the first of those options.	Chapter 6

it is our view that the OC would be constitutionally stronger and more secure as part of the existing court structure rather than a separate court. A separate court will require a wide ranging statutory structure to cover the various fall back provisions (routes of appeal and other eventualities). Worse still, these eventualities may not be perceived at the time of statutory conception and the OC will be a similar position as Tribunals - without fall back positions or inherent jurisdiction. It would also avoid questions regarding the type of court it is.

As it is expected that the same district judges will be sitting in both, with the same back office staff, it would be sensible for the OC to be part of the CC. This would then allow for the cases to be easily transferred to the CC when necessary, provide already trod routes of appeal, jurisdictional and enforcement answers, and an ability to have recourse to the CPR if necessary (rather than having to apply it by analogy which allows for diverging application).

Further, it if runs alongside the Small Claims court, this would prevent the perceptions of a two-tier justice system, and in any event it appears that the same kinds of judges will still be hearing contested trials as before. Any sensible system of automated IT issuing of claims & applications should be capable of being gradually rolled out across the entire court system, so it makes sense to keep things as unified as possible. It would be better to have a reformed small claims court than a separate but necessarily linked OC and CC. The prestige and accompanying PR will exist whether the OC is part of the CC or not: the statutory separation or otherwise is unlikely to interest LIPs and creating a plurality of courts may in fact confuse them.

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	12.25.2	Debate		The types of claim which should be included within, or be excluded from, the OC, assuming that £25,000 is used as the planned steady-state value ceiling.	Chapter 6
	12.25.3	Debate		Assessing the size of the class of court users, actual and potential, who will be challenged in the use of computers, and therefore need assistance, identifying the types of assistance required, and the ways and means of providing it.	Chapter 6

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The initial system should only comprehend straightforward liquidated money claims. Only once these are seen to work should consideration be given to adding unliquidated money claims. In relation to non-money claims, it is perhaps better to think of IT technology being extended into them, rather than them being brought into a specific 'Online Court'. However, the complexity of non-money claims is such that it is difficult to conceive how the triage process would be designed and undertaken by CO. However, what savings will this process actually make? If these matters are already straightforward and easy, it is difficult to see that they are particularly burdensome upon the court system or that there will be a benefit (as against cost) to implementing this system.
We consider that as a matter of urgency, and before any money is spent on this system, a properly resourced and structured survey should be undertaken to discern what they actually want in terms of a process, and in terms of the assistance that might be required.

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	12.25.4	Debate		Identifying any items qualifying for limited costs shifting, other than court fees, and whether the generally limited scope for costs shifting should be subject to a conduct exception.	Chapter 6
	12.25.5	Debate		Deciding whether any other route of appeal than to a Circuit Judge would be appropriate, and the rules to govern such appeals.	Chapter 6
Case Officers	12.26	Debate		As explained in Chapter 7, there has been a large measure of provisional agreement between HMCTS, the Civil JEG and with consultees during the first stage of this review about what appeared to be major issues about the role of Case Officers. Those which survive, and need further and closer analysis, are the following:	Chapter 7
	12.26.1	Debate		Whether the conciliation offered by Case Officers in stage 2 of the OC should be based on simple telephone mediation or some form of written early neutral evaluation, or a mixture.	

If this is truly a system for LIPs it is hard to see on what basis there should be any costs shifting at all. The conduct exception may need to be considered.
The same as court orders from DJs (as it is anticipated that the OC judges will be DJs). For the reasons already given, to prevent a plurality of rules, the CPR should be used.
This entirely depends on the qualifications of the Case Officers. If they are non-lawyers, or only given very basic training, they should only be acting as mediators. ENE can surely only be appropriate if qualified lawyers are involved: as currently offered ENE should be by judge only. As stated above, we assume that a CO involved in mediation will not be involved in the on-going case management of that case.

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	12.26.2	Debate		How to draw a practicable but flexible line between routine case management, suitable for Case Officers, and the more discretionary type calling for judicial expertise and authority. This arises mainly in the County Court, not the OC. It may be as much a matter of sensible working practices as hard lines and rules.	
	12.26.3	Debate		Specialisation, qualification, training and experience of Case Officers	
	12.26.4	Debate		The precise parameters of the right to have a Case Officer's decision reconsidered by a judge	

As set out above, this is a very difficult line to draw, but if the line is to drawn then truly routine case management is presumably typified by orders currently made on the court's own initiative, such as initial orders for standard directions.
As almost everything else impinges on substantive rights it appears to require judicial discretion.

We are not clear why these issues would not arise on the online court - is the proposal that all case management decisions (including those with discretionary elements) are done by CO? That appears to be a distinction between the OC and the CC/HC that we are unable to justify.

We are not clear as to specialisation. In terms of the OC, it appears that either all CO should be able to manage all aspects of the case, including conciliation and mediation or trained mediators are used at stage 2.

As stated above, ENE requires a qualified (and experienced) lawyer.

In terms of experience, it is difficult to see what more experienced CO would be doing as opposed to junior CO: neither should be dealing with matters that impinge upon substantive rights. It would appear that the more senior CO would be better placed thaa a junior CO to make the first assessment of whether the matter did impinge upon substantive rights, if CO were to make that decision at all.

In terms of training, they would require training in litigation procedure and the CPR (and possibly mediation).

All. If any limit - then any decision involving discretion (rather than mechanical box-ticking) should be reviewable by a judge. However, even mechanical box-ticking can go awry.

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Number of Courts and Deployment of Judges	12.27	Debate		a sufficient case can be made for eventual unification of the civil courts to make it worth taking the serious risks arising from doing so, as set out in the Brooke Report. My provisional view is that such a case has not yet been made out, and that detailed consideration of other means of remedying current weaknesses needs to be carried out.	Chapter 8
	12.27.1	Debate		Moving the current value limits dividing the County Court from the High Court, so as to direct more of the workload towards the County Court.	
	12.27.2	Debate		Finding structural means of reinforcing the principle that no case is too big to be resolved in the regions.	

We agree. There is no need to tidy for the sake of it and the reputation and prestige of, and confidence in the High Court may be diluted by such unification. It is not clear what problems it would solve.
This is understandable from a point of view of pressures on the higher courts, but there is no avoiding the inevitable consequences of almost all the proposals that most cases are to be decided by less high-ranking judges than previously: which presumably will mean a less high quality of justice overall. Courts taking on greater case load will require greater support staff or backlogs will ensue. This will require more funding.
As stated above, we agree with the principle that no case should be too big to be resolved in the regions and this means is the provision of judges in the regions.

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	12.27.3	Debate		Doing more to foster the growth of regional centres of civil specialist excellence, so as to avoid the current tendency of regional cases to be issued in, or transferred to, London. This may require at least some of the regional centres to be made fully competitive with London as a venue for the largest and most complex civil cases.	
	12.27.4	Debate		Finding ways of giving effect to the recommendation that there needs to be a greater concentration of civil expertise among the Circuit Judges and District Judges.	
	12.27.5	Debate		Improving the current systems for the transfer out of London of cases more appropriately managed and tried in the regions.	
	12.27.6	Debate		Considering whether further to reduce the number of District Registries, or to abandon or replace the concept altogether.	

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We agree with the principle that no case should be too big to be resolved in the regions. This is a market response point; if parties can get the same quality justice in the regions, but quicker and cheaper than in London then they will naturally go there. However, this will need funding, for both judges and support for judges (specialist DJs)
And Deputies. Again, this is a market response point: judges in centres of excellence will attract the work to allow the DJ to specialise. Otherwise currently, the quality of DJs is variable (as many are working outside their areas of specialism).
Subject to the above points.
District Registries should be the foundation of centres of excellence. The concept and name should not be kept simply for a matter of form.

	12.27.7	Debate		Considering whether the current number and geographical territories of the Designated Civil Judges will best serve the civil court structure as it emerges from the Reform Programme.	
	12.27.8	Debate		Deciding whether and if so how to deal with the divisional fault line within the Rolls Building.	
	12.27.9	Debate		Considering whether any structural changes would increase the capacity of the civil courts to respond more quickly and flexibly to sudden changes in the make up of the civil workload.	

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Likely to be a limited number of regions.
The split is sensible and valued. It allows specialisation by HCJs. We are not clear what benefits would be achieved by removing the fault line.

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Rights and routes of appeal	12.28	Debate		I have explained how urgent it is for the excessive burden on the Court of Appeal to be alleviated, and that decisions in principle are likely to overtake the preparation of a final report within this review. Nonetheless urgent written feedback on the key questions of public importance outlined in Chapter 9 would greatly assist in informing that decision making, and in shortening the routes to implementation thereafter.	Chapter 9

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The most obvious route is to recruit more judges. The "collegiality" of the CoA should not be valued above further recruitment (unfortunately, and we expect unintentionally, "collegiality" conveys a tone of a closed and limited environment). We note the attempts to widen access to bench - recruiting more judges would accord with that movement.

It is not clear if the current problems are time-limited (i.e. a response to a change that has caused a rush now, but will become manageable) or permanent. Any proposal would also have to consider the evidence as to what is causing the current problems. It is believed that a current problem is oral renewals in family and immigration matters. If that is the problem (or a main problem), a solution may be to temporarily use a Family High Court Judge to manage the backlog of oral renewals of permission to appeal.
If more judges are not forthcoming, the other routes to improve this are:
1. Greater use of TWM
2. Appointment of temporary specialist judges to deal with the backlog (for instance in family) or removal of renewal in these areas
3. Right of appeal from CC to HC Judges, although with clear leapfrog mechanism to the CoA and without use of deputies/section 9 judges as the appeal would then be heard by the same level of judge
4. Use of 2 CoA judges or even, in some cases, 1 CoA judge
5. A temporary hiatus on current CoA judges in public enquiries etc., to allow the backlog to clear
6. Stringent time limits on oral submissions and limits on written submissions in full hearings.

Further, High Court Judges are valued because of their great trial expertise - this should not be sacrificed.

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	12.28.1	Debate		How valuable is the current broad right to the oral renewal of an application for permission to appeal which has failed on the documents.	
	12.28.2	Debate		To what extent if at all would a substantial increase in the use of deputies in the Court of Appeal, or the use of two judge courts, reduce the actual or perceived quality of the decision making.	
	12.28.3	Debate		Should the thresholds for the obtaining of permission to appeal be raised, and if so by reference to what criteria.	
	12.28.4	Debate		Should the focus of the Court of Appeal be directed mainly to second appeals.	

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Very valuable to LIPs, who are notoriously bad at producing written arguments. Sometimes it rights a wrong which would be left un-righted and also it gives litigants a feeling of justice having been seen to be done. It is also not clear what size the problem is: how many oral rights to renew, how long they take, their lead time, their judging time? A removal of this may also require better and fuller reasons in writing.
Use of 2 CoA appears fine: the perception is currently that only one will have read the material. For simple CoA matters, even one CoA judge might be justifiable and would be better than scrapping the oral right to renew.
It is difficult to conceptualise a higher test than "real prospect of success" or "some other compelling reason". As well as the difficulties in formulating a new test, we are also concerned that it would in effect just make the test more difficult to apply, increasing the workload for judges.
Yes, except of course from High Court decisions and subject to a mechanism for leapfrog to ensure that work dealt with in the CC does receive some CoA oversight.

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	12.28.5	Debate		How should space be made in the workloads of High Court judges if they are to be able (however willing) to provide more assistance to the Court of Appeal, both as deputies and by the giving of more appellate jurisdiction to the High Court.	
Enforcement	12.3	Debate		The key question is whether enforcement of judgments should become a unified service, even if the civil courts which deliver those judgments are not themselves unified.	Chapter 10
	12.30.1	Debate		Which features of the current County Court and High Court enforcement procedures would best be replicated or developed in a unified service.	
	12.30.2	Debate		Are there possible new methods of enforcement, or new procedures within the currently recognised avenues, which would be made possible or better by the processes of digitisation and automation.	

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As stated above, HCJ are valued for their trial experience. We are concerned that the transfer of work down would be a potential downgrade of justice and it would be more sensible to reduce the number of CoA judges hearing a matter than shift work lower down.
The issue with enforcement appears to be that the market is responding to the reality that enforcement at the County Court level is not satisfactory. It is impossible to obtain urgent appointments and we consider there is a lot of force in the comments in the Interim Report. The CC enforcement needs to be improved to mirror the HC: this should result in the CC becoming more attractive.

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	12.30.3	Debate		Should all methods of enforcement be centralised as far as possible, along the lines now being planned for charging orders and attachment of earnings orders.	
	12.30.4	Debate		Should there be a default assumption that judgments for payment of money should themselves require a judgment debtor who fails or is unable to pay the debt within the stated time to take initial steps to facilitate enforcement, such as disclosure of assets and income resources, rather than leave the judgment creditor to have to take the initiative, as at present.	
Boundaries	12.31	Debate		Employment Tribunal and EAT	

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